

1-1-1983

Washington report, vol. 12 no.21, July 18, 1983

American Institute of Certified Public Accountants.

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Recommended Citation

American Institute of Certified Public Accountants., "Washington report, vol. 12 no.21, July 18, 1983" (1983). *Newsletters*. 901.
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AICPA *Washington Report*

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OFFICE OF MANAGEMENT AND BUDGET

A proposed revision to OMB Circular A-122 regarding the allowability of lobbying costs for non profit institutions receiving federal funds will be the subject of a solicitation for public comment within the next few weeks, according to OMB officials. Washington sources indicate that the new proposal has been substantially toned down since the sweeping revisions proposed in January. The revision recognizes the allocation theory under which only a portion of an item of expense used for "lobbying and related activities" will be disallowed. There are two exceptions to the allocation principle, one is for meetings and conferences and the other is for trade association dues. Sen. David Durenberger (R-MN), Chairman of the Senate Governmental Affairs Subcommittee on Intergovernmental Relations, has scheduled a 7/28 hearing on the lobbying cost issue. Representatives from the OMB, the GAO and recipients of federal contracts and grants are expected to testify.

SECURITIES AND EXCHANGE COMMISSION

A proposal to raise the aggregate offering price ceilings for SEC Form 18 for domestic and Canadian issuers has been released for public comment (see the 7/15/83 Fed. Reg., pp. 32359-61). Form S-18, a simplified registration form for small, first time issuers of securities, would be revised to raise the aggregate price ceiling to \$10 million; raise the aggregate offering price ceiling for securities sold for the account of persons other than the issuer to \$3 million, and revise the disclosure requirements for transactions with management. Comments are requested by 8/22/83. For additional information contact Suzanne S. Brannan at 202/272-2644.

The Advisory Committee on Tender Offers issued its final report on 7/8/83 and recommended tighter regulations on corporate takeovers to protect shareholders. The Committee, composed of 18 private attorneys, accountants, investment advisors and other financial experts, was appointed in 2/83 by SEC Chairman John S.R. Shad. Its mandate was to examine the questions raised in connection with takeovers and the effectiveness of the regulatory process under the Williams Act of 1968. The Committee reached the general conclusion that regulations should neither encourage nor discourage corporate takeovers, that they should favor neither the acquiring nor the target company, but should be aimed at "protecting the interests of shareholders and the integrity and efficiency of the markets."

TREASURY, DEPARTMENT OF

The IRS recently published a preliminary list of original issue discount (OID) obligations to help brokers and nominees identify them to meet reporting requirements of the 1982 Tax Act. These obligations are instruments, such as bonds, debentures, notes and certificates, that were originally issued at more than a diminimus discount from their stated redemption price at maturity. Each year holders of such obligations must include in income a portion of the discount. According to IRS News Release IR 83-97, the list contains about 500 obligations and is being published on a preliminary basis so that issuers, underwriters, brokers and others may bring errors and omissions to the IRS' attention. The IRS plans to publish a corrected list in December 1983. Comments on the list and information about errors or omissions should be sent to OID Publication Project DM:PFR:P, IRS, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Copies of the preliminary list may be obtained from IRS district offices by mid-July.

An IRS hearing to consider regulations implementing new penalties for substantial understatement of tax liability was held on 7/12/83. Officials of the Treasury Department and IRS continued to support proposed regulations issued 3/10/83, including the use of a separate disclosure statement in meeting the "adequate disclosure standard" mandated under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The proposals, under tax code Section 6661, generally provide guidance on the circumstances that could reduce understatement liability. The understatement may be reduced by showing a substantial authority for the position taken or by providing adequate disclosure of the questionable items on the return. Albert Ellentuck, appearing on behalf of the AICPA Federal Tax Division, commented regarding the penalty provision and said that "such provisions were not intended (nor should they be used) to require the practitioner to become an enforcement arm of the Internal Revenue Service." Mr. Ellentuck and other witnesses from the legal and accounting professions took exception with various parts of the proposed regulations including the "red flag" disclosure and the effective date of the regulations.

SPECIAL: LEGISLATION INTRODUCED AND HOUSE HEARING SCHEDULED ON ESTABLISHMENT OF RULES GOVERNING FRINGE BENEFITS

Legislation to establish permanent rules for the taxation of fringe benefits has been introduced as H.R. 3525 by Reps. Pete Stark (D-CA) and Barber Conable (R-NY). The focus of the bill is a tax exclusion for benefits offered to employees on favorable terms where the goods or services are the same as those provided to customers in the ordinary course of the employer's business. A tax exclusion would be provided for two types of employer products that are offered to workers at below-market prices, products for which the employer incurs no extra cost and forgoes no revenue in providing, and employee discounts of up to 20 percent. According to Rep. Stark in his introductory remarks, "Favorable income tax treatment would be available only when these fringe benefits are provided to employees on terms which do not discriminate in favor of owners, shareholders, or highly compensated employees." Additional provisions of the legislation include conforming amendments for Social Security, unemployment, and railroad retirement taxes; clarification that the new rules would not apply to fringe benefits covered by other statutory rules; and, a proviso that property may not be included in a cafeteria plan. A special rule also would be provided for tuition reduction programs by educational institutions. An 8/1/83 hearing has been scheduled by the Ways and Means Select Revenue Measures Subcommittee. The hearing will begin at 10 a.m. in Room 1100 of the Longworth House Building. Requests to testify must be submitted by 7/26/83.

SPECIAL: TAX SIMPLIFICATION BILL WILL BE SUBJECT OF HOUSE HEARING

H.R. 3475, the "Tax Law Simplification and Improvement Act of 1983," will be the subject of a public hearing by the House Ways and Means Committee on 7/25/83. The bill, introduced by Ways and Means Chairman Dan Rostenkowski (D-IL) and Rep. Barber Conable (R-NY), Ranking Minority Member, is, according to Rep. Rostenkowski, the culmination of months of effort by congressional staff. He also expressed appreciation to the AICPA for suggested areas of study, proposed solutions, and deliberations with his staff. The bill contains nine titles, including estimated tax revisions for individuals, domestic relations, estate tax provisions, simplification of income tax credits and tax court provisions. The AICPA Federal Tax Division will submit additional comments on the bill at the time of the hearing. The Ways and Means public hearing will be held in the Committee's main hearing room, 1100 Longworth House Office Building, beginning at 10 a.m. on 7/25/83.

SPECIAL: HOUSE SUBCOMMITTEE HOLDS HEARING ON REP. MICA'S FCPA BILL

Qualified support for H.R. 2157, a bill to amend the Foreign Corrupt Practices Act of 1977 (FCPA), was expressed by the Department of Justice and the Securities and Exchange Commission in congressional testimony on 7/12/83. Appearing before the House International Economic Policy and Trade Subcommittee, Committee on Foreign Affairs, Assistant Attorney General Jonathan C. Rose expressed support for the bill, while limiting his comments to the changes proposed in the anti-bribery provisions of the Act. Rose supported the language in H.R. 2157 which replaces the "reason to know standards" in the FCPA with language "creating liability when a third party is directed or authorized 'expressly or by a course of conduct' to make an illicit payment." He did not object to the transfer of civil enforcement authority from the SEC to the Commerce Department, as outlined in H.R. 2157. Appearing on behalf of the SEC, Enforcement Director John M. Fedders stated that the Commission supports H.R. 2157, "to the extent that it is similar" to S. 414, another FCPA amendment introduced by Sen. John Heinz (R-PA) on 2/3/83. Fedders also stated that the Commission "does not support transferring administration of the accounting provisions of the FCPA from the SEC and the jurisdiction of the Commission to the Department of Commerce or limiting the focus of the accounting provisions to 'demonstrating compliance' with the anti-bribery provisions of the FCPA." In an exchange between Subcommittee Chairman Don Bonker (D-WA), Assistant Attorney General Rose revealed that the Department of Justice had 20 open investigations concerning possible violations of the FCPA. Bonker also stated that additional hearings on H.R. 2157 would be conducted by his Subcommittee, including an additional appearance by Rose who left the hearing prior to its conclusion to attend a White House briefing. Rep. Dan Mica (D-FL), the author of H.R. 2157, expressed the hope that a mark-up and referral of the bill to the full Foreign Affairs Committee could occur prior to the August congressional recess, which begins on 8/6/83.

For additional information, please contact Jim Kovakas, Gina Rosasco, Nick Nichols or Kathee Baker at 202/872-8190.

AICPA *Washington Report*

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